

Honorable George A. O'Toole
United States District Court
District of Massachusetts
John J. Moakley Courthouse
One Courthouse Way
Boston, MA 02210

August 3, 2004

RE: M. William Potts, Jr. vs. David L. Winn
Civil Action No. 04-40068-GAO

Honorable Judge O'Toole:

SUPPLEMENTAL INFORMATION TO PETITIONER'S OPPOSITION and
MEMORANDUM IN OPPOSITION TO MOTIONS OF RESPONDENT

Enclosed is a copy of the Final Denial of Appeal from the Bureau of Prisons (BOP) Central Office, which was received by me on August 3, 2004. (Also enclosed is the Petitioner's Central Office Administrative Remedy Appeal, BP-11, dated June 7, 2004)

The Petitioner had requested in the BP-11 that he "be eligible for transfer to a CCC on or about 12/11/04, 6 months prior to my Statutory Release date of 6/11/05, if I meet all of the conditions that have been required of an inmate prior to 12/20/02."

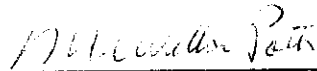
The response from the BOP Central Office is a denial of the Petitioner's request for Administrative Remedy, the final step in the Administrative Remedy Process. All appeals through the BOP Administrative Remedy Process have been exhausted, with predictable denials at each and every level.

The government in its Motion to Dismiss raised "failure to exhaust Administrative Remedies" defense. In Petitioner's Opposition Memorandum (pgs. 6-9) I raised the issue of futility..."To the best of the Petitioner's knowledge, the BOP has consistently denied every administrative-remedy request raising the identical issue by other inmates. In relation to this issue, the process is so futile that it is defacto exhausted before it's commencement." (Pg. 8)

The Petitioner utilized and exhausted the BOP Administrative Remedy Process even though he believes on this issue, consistent with overwhelming judicial authority, he is not required to do so.

This information is provided for your consideration and inclusion in this case.

Very Truly Yours,



M. William Potts, Pro Se
#24866-038 Unit I
Federal Medical Center, Devens
PO Box 879
Ayer, MA 01432

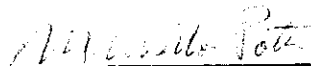
Encl

cc: Christopher R. Donato
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon Christopher R. Donato, Assistant United States Attorney, by my depositing a copy thereof in the internal mailing system at Federal Medical Center, Devens, Unit I (Camp), postage prepaid, addressed to the Office of the United States Attorney, John Joseph Moakley Courthouse, One Courthouse Way, Suite 9200, Boston, MA 02210 on this 4th day of August 2004.

I swear under the penalties of perjury that the foregoing is true on this 4th day of August 2004.



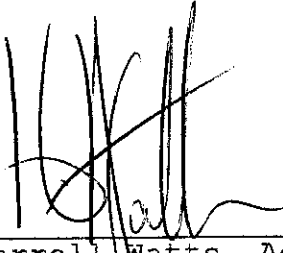
M. William Potts, Pro Se
#24866-038 Unit I
Federal Medical Center, Devens
PO Box 879
Ayer, MA 01432

Administrative Remedy No. 331631-A1
Part B - Response

This is in response to your Central Office Administrative Remedy in which you request that your case be reviewed for a Community Corrections Center (CCC) designation consistent with the pre-December 20, 2002 guidelines. Specifically, you request a six-month CCC placement.

Our review reveals the Warden and the Regional Director accurately addressed the issues raised. The process of designating inmates to a CCC for service of a portion of their sentence has changed. The U.S. Department of Justice, Office of Legal Counsel, issued an opinion on December 13, 2002, that 18 U.S.C. § 3624(c) limits the transfer of an inmate to a CCC to the last 10% of an inmate's prison term. Accordingly, your 10% date is April 18, 2005, and you may not be transferred to a CCC prior to that date. All cases considered for CCC placement must be reviewed in compliance with the legal opinion. Your Unit Team will review your case for CCC placement at the appropriate time. Your appeal is denied.

July 26, 2004
Date



Harrell Watts, Administrator
National Inmate Appeals *pop*

Received 8/3/04 mdr

U.S. Department of Justice

Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-DIR-9 and BP-DIR-10, including any attachments must be submitted with this appeal.

From: Potts, M. William 24866-038 I FMC - Devens
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A—REASON FOR APPEAL

I am appealing the decision denying my BP-10: Regional Administrative Remedy Appeal in relation to my BP-9 which requested that a determination be made that I will be eligible for transfer to a CCC on or about 12/11/04, 6 months prior to my Statutory Release date of 6/11/05, if I meet all of the conditions that have been required of an inmate prior to 12/20/02. My request has been denied because of the change in Policy and Procedure dictated by the Federal Bureau of Prisons Memorandum from the Assistant Director, Correctional Programs Division dated 12/20/02 regarding Community Confinement procedure changes. I believe the Policy and Procedure dictated by the 12/20/02 memorandum is based upon erroneous interpretations of 18 USC § 3621 and 18 USC § 3624, did not meet the rule-making notice and comment requirements of APA 5 USC § 551, et seq. and has violated the due process clause of the U.S. Constitution. I believe that the interpretation of these statutes by the Bureau of Prisons, the Dept. of Justice, the Judiciary, and the Legal Community for in excess of 20 years supports my position on this issue. I believe, as per the policy, procedure, and practice in place for at least 20 years prior to 12/20/02, I would be eligible for transfer to a CCC 6 months prior to my statutory Release date of 6/11/05.

6/7/04

DATE

M. William Potts

SIGNATURE OF REQUESTER

Part B—RESPONSE

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER:

331631-A1

Part C—RECEIPT

CASE NUMBER:

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT:

DATE



Printed on Recycled Paper

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

BP-231(13)
APRIL 1982